



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 26, 1994

IN REPLY PLEASE
REFER TO OUR FILE

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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JUL 27 1994

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RM-8491

Re: In the Matter of Petition for Rulemaking
to Adapt the Section 214 Process to the
Construction of Video Dialtone Facilities

Dear Secretary Caton:

Enclosed please find an original and four (4) copies of
the Reply Comments of the Pennsylvania Public Utility Commission in
the above-captioned matter.

Sincerely,

Maureen A. Scott
Assistant Counsel

MAS/ms
Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Petition for Rulemaking to) Docket No. DA94-621
Adapt the Section 214 Process)
To The Construction of Video)
Dialtone Facilities)

REPLY COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission ("PaPUC") submits the following reply comments to the oppositions or initial comments filed by US West, Pacific Telesis, GTE, Bell Atlantic and Bell South (collectively the "Companies").¹ The PaPUC also filed initial comments in support of the Petition for Rulemaking on July 18, 1994.²

¹ The Companies refer throughout their comments to an Affidavit of Dr. Mark N. Cooper which accompanied the Petition for Rulemaking. At the time the PaPUC filed its initial comments, it was not aware of or had not seen the subject Affidavit. Evidently, the copy service used by the PaPUC inadvertently failed to provide the PaPUC with a copy of the Affidavit. As of this date, the PaPUC has still not seen a copy of the Cooper Affidavit. To the extent the Affidavit addresses specific allegations of electronic redlining in pending cases, the PaPUC continues to believe that such allegations should also be addressed in the context of each individual carrier's § 214 application itself. Having not seen the Affidavit, the PaPUC takes no position with respect to the information therein, and in supporting the Petition for Rulemaking, does so in the context of the general requests for relief contained in the Petition itself.

² In the Matter of Petition for Rulemaking to Adapt the Section 214 process to the Construction of Video Dialtone Facilities, Petition for Rulemaking ("Petition for Rulemaking"), filed on May 23, 1994, by the Center for Media Education, Consumer Federal of America, the Office of Communication of the United Church of Christ, and the National Association for the Advancement of colored

In determining whether to grant the Petition for Rulemaking, the Commission must weigh the seriousness of the concerns raised by the Petitioners against the Companies' concerns regarding the availability of other remedies, the length of the current § 214 application process, and the desire for speedy deployment of video dialtone facilities. In other words, the Commission must essentially strike a balance between these competing concerns in determining whether granting the Petition would be the most effective means of addressing the Petitioners' concerns. While the PaPUC supports the Companies' desire for speedy deployment of video dialtone facilities, for the reasons given below, the PaPUC believes that the Commission can arrive at only one conclusion in this instance, that being to grant the Petitioners' request for rulemaking.

Many of the Companies argue that the relief requested is unnecessary since § 202 of the Communications Act of 1934, as amended ("the Act"), already prohibits an unreasonable, deliberate intent to discriminate based upon economic, racial or ethnic grounds and that this is an element of the public interest standard that every § 214 application must now meet.³ Consequently, parties who believe that a carrier has used race or income as a factor in its deployment decisions can file a complaint with the Commission

People, National council of La Raza (collectively "the Petitioners."

³ GTE Opposition, pp. 6-7; Pacific Bell's Opposition to Petition for Relief and Petition for Rulemaking, pp. 9-12; Comments of US West, pp. 3-4.

or file comments with the Commission during review of the company's § 214 application or tariff filing, the Companies argue. The PaPUC does not believe that the Commission's complaint process, however, would be the most effective or desirable means of addressing or rectifying claims of electronic redlining. First, the complaint process can be a particularly long, burdensome and expensive process which may discourage filing altogether and which will certainly not assure the prompt resolution of allegations of a serious nature. Second, continual resort to the complaint remedy in these cases would unnecessarily tie up important Commission resources, a situation which could be entirely avoided by the adoption of an anti-redlining clause and up front filing requirements, as the Petitioners request. Third, and equally important, monetary damages are simply not an effective remedy for electronic redlining. Finally, with respect to the Companies' assertions that parties simply participate in the Section 214 application process, as discussed later, without adequate informational requirements, it would be difficult for parties to make a "convincing" showing in this regard.

Perhaps the crux of many of the Companies' oppositions is their belief that the relief requested by Petitioners would merely add another "layer of regulation" introducing further delay into the already time consuming § 214 application process.⁴ In actuality, however, the PaPUC believes that the adoption of an

⁴ Pacific Bell's Opposition to Petition for Relief and Petition for Rulemaking, pp. 11-12, Opposition of Bell Atlantic, p. 5; GTE Opposition, pp. 7-8.

anti-redlining clause along with specific filing requirements designed to allow the Commission and others to evaluate compliance with the anti-redlining clause up front in the application process, would eliminate any concerns as to an applicant's intent from the start. Applicants and others would, therefore, not be forced to spend a lot of time and effort later in the application process explaining, defending or questioning deployment decisions. Consequently, the PaPUC believes that this information would actually further the Companies' desire for more expeditious approval of their § 214 applications, and at the same time assist the Commission in meeting its recent commitment to expeditiously process all pending and prospective § 214 applications for the provision of video dialtone service.

Some of the Companies also argue that the Petitioners' claims are not "convincing" or extensive enough to warrant a rulemaking that would affect the entire telephone industry.⁵ Again, the PaPUC disagrees. The Petition for Rulemaking raises an extremely serious issue of industry-wide concern. Moreover, it appears that the Petitioners have raised at least some question concerning many pending applications. More importantly, the fact that the Petitioners' may not have presented a convincing enough case for some parties is probably more a reflection of the inadequacy of current filing requirements than a reflection of the merits of the Petitioners' claims.

At least one of the Companies also argues that if the

⁵ US West Comments, pp. 4-5; Opposition of BellSouth at p. 7.

Commission grants the Petition, it will merely increase the regulatory disparity already existing between telephone companies and cable tv providers.⁶ The PaPUC agrees that as competition develops, the Commission and states must strive to achieve regulatory parity among similarly situated providers. However, as those making this claim well know, video dial platform service is common carriage and subject to Title II of the Communications Act of 1934, as amended, while cable service has been declared to be non-common carriage by nature and subject to Title VI of the Act. Certainly, one cannot reasonably argue that regulators ignore this fact when deciding how to regulate the two services. The PaPUC certainly agrees, however, that as the two industries converge, this will become a legitimate concern for both cable and telephone companies.

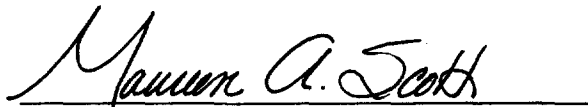
Finally, to the extent the Petition raises universal service issues, the PaPUC agrees with the Companies that these issues would be more appropriately addressed in the Commission's comprehensive proceeding which it plans to undertake in the next several months. The PaPUC does not believe that it was the Petitioners' intent that the Commission resolve USF issues in the context of this proceeding.

In summary, the PaPUC strongly supports the Petition for Rulemaking. The Petition raises significant issues of industry-wide concern which would be more effectively addressed through rulemaking than the Commission's complaint process.

⁶ Opposition of GTE, pp. 10-11.

Moreover, the Commission should address all other outstanding issues surrounding the provision of video dialtone in the same generic proceeding. The company specific § 214 process by itself is inadequate to address issues of industry-wide concern and its use raises significant due process concerns.

Respectfully submitted,

A handwritten signature in cursive script, reading "Maureen A. Scott", written over a horizontal line.

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Dated: July 26, 1994.